

1 The Honorable John C. Coughenour  
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UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

9 JUAN ALBERTO CASTANEDA MIRANDA,  
10  
11 Plaintiff,  
12 v.  
13 U.S. DRUG ENFORCEMENT  
14 ADMINISTRATION, a U.S. government  
15 agency; U.S. FEDERAL BUREAU OF  
16 INVESTIGATION, a U.S. government agency;  
17 UNITED STATES BUREAU OF ALCOHOL,  
18 TOBACCO, FIREARMS & EXPLOSIVES, a  
19 U.S. government agency; AGENT AGUIRE,  
20 BADGE NO. 7785, an employee for the U.S.  
21 federal government; AGENT MORELAND,  
22 BADGE NO. 7701, an employee for the U.S.  
23 federal government; and UNKNOWN NAMED  
24 AGENTS OF THE U.S. FEDERAL BUREAU  
OF INVESTIGATION, U.S. DRUG  
ENFORCEMENT ADMINISTRATION, U.S.  
BUREAU OF ALCOHOL, TOBACCO,  
FIREARMS & EXPLOSIVES 1-10, inclusive,

Defendants.

CASE NO. 2:21-cv-00952-JCC

DEA, FBI, AND ATF'S  
MOTION TO DISMISS

Noted for consideration:  
October 22, 2021

Defendants U.S. Drug Enforcement Administration ("DEA"), U.S. Federal Bureau of Investigation ("FBI"), and U.S. Bureau of Alcohol, Tobacco, Firearms & Explosives ("ATF"), by and through counsel of record, Tessa M. Gorman, Acting United States Attorney for the

1 Western District of Washington, and Kristen R. Vogel, Assistant United States Attorney for said  
 2 District, hereby moves pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure to  
 3 dismiss Plaintiff's claims against DEA, FBI, and ATF for lack of subject matter jurisdiction.<sup>1</sup>

4 **I. STATEMENT OF FACTS**

5 Plaintiff Juan Alberto Castaneda Miranda files this civil rights action seeking  
 6 compensatory and punitive damages for alleged violations of his constitutional and state law  
 7 rights. Dkt. 1 (“Compl.”), at ¶¶ 1.1.

8 Mr. Castaneda Miranda alleges that on July 13, 2018, the U.S. District Court for the  
 9 Western District of Washington issued a search and seizure warrant to search his apartment for  
 10 controlled substances, drug paraphernalia, drug transaction records, etc. *Id.* at ¶ 4.9. Pursuant to  
 11 that search warrant, Mr. Castaneda Miranda alleges that on July 17, 2018, the defendants “raided  
 12 and destroyed [his] apartment, killing his cat, and causing personal injuries to [him].” *Id.* at ¶  
 13 4.10. Plaintiff alleges that during this raid he pleaded with agents to look in his wallet to confirm  
 14 that they had the wrong apartment and the wrong person but that his pleas were ignored. *Id.* at  
 15 ¶¶ 4.11-4.12. Plaintiff alleges that after his apartment and vehicle were “torn up,” he was  
 16 informed by the defendants that they had “the wrong individuals and the wrong apartment and to  
 17 complete claim forms for reimbursement of damages.” *Id.* at ¶¶ 4.13-4.14. As a result, Plaintiff  
 18 alleges that he has suffered significant personal injuries, wage loss, and property damage from  
 19 the defendants’ wrongful arrest, search and seizure and destruction of his personal belongings in  
 20 violation of his Fourth and Fifth Amendment rights. *Id.* at ¶ 4.15.

21 Plaintiff’s Complaint asserts six claims for relief against all defendants: (1) unreasonable  
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23 <sup>1</sup> Pursuant to either 42 U.S.C. § 1983 or *Bivens*, Plaintiff also sues Agents Aguirre and Moreland, whom he alleges  
 24 are (or were) employees of the U.S. federal government. Upon information and belief, these two individuals have  
 not been served with a summons and complaint, nor are they federal employees. Accordingly, this motion is only  
 on behalf of DEA, FBI, and ATF.

1 search and seizure for his detention and arrest pursuant to 42 U.S.C. § 1983; (2) unreasonable  
 2 search and seizure for use of excessive force pursuant to 42 U.S.C. § 1983; (3) substantive due  
 3 process violations pursuant to 42 U.S.C. § 1983; (4) federal, city, county, and municipal liability  
 4 for unconstitutional customs or policies pursuant to 42 U.S.C. § 1983; (5) federal, city, county,  
 5 and municipal liability for failure to train pursuant to 42 U.S.C. § 1983; and (6) a plausible claim  
 6 for relief against the defendants pursuant to *Bivens*. Compl. at ¶¶ 5.1-10.4.

## 7           II. STANDARD OF REVIEW

8           Dismissal is appropriate under Federal Rule of Civil Procedure 12(b)(1) when the court  
 9 lacks subject matter jurisdiction over the claim. Federal district courts are courts of limited  
 10 jurisdiction; “[t]hey possess only that power authorized by Constitution and statute, which is not  
 11 to be expanded by judicial decree.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375,  
 12 377 (1994) (citations omitted). Accordingly, “[i]t is to be presumed that a cause lies outside this  
 13 limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting  
 14 jurisdiction.” *Id.* (citations omitted).

15           A motion to dismiss for lack of subject matter jurisdiction can attack the allegations  
 16 either facially or factually. *See Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir.  
 17 2004). A moving party facially attacks the allegations by asserting “that the allegations  
 18 contained in a complaint are insufficient on their face to invoke federal jurisdiction.” *Id.* In  
 19 reviewing a facial attack, the court must accept all of the factual allegations in the complaint as  
 20 true. *Lacano Investments, LLC v. Balash*, 765 F.3d 1068, 1071 (9th Cir. 2014). Even when  
 21 accepting the truthfulness of the allegations however, “[t]he plaintiff in a lawsuit against the  
 22 United States must point to an unequivocal waiver of sovereign immunity” to sustain his burden  
 23 of demonstrating that subject matter jurisdiction exists. *Blue v. Widnall*, 162 F.3d 541, 544 (9th  
 24 Cir. 1998); *see also Cato v. United States*, 70 F.3d 1103, 1107 (9th Cir. 1995) (plaintiff bears the

1 burden of showing that the United States has waived its sovereign immunity).

2 **III. ARGUMENT**

3 **A. The Court Lacks Subject Matter Jurisdiction Over Plaintiff's *Bivens* Claim  
Against DEA, FBI, and ATF.**

4 Plaintiff's claim against DEA, FBI, and ATF under *Bivens v. Six Unknown Named Agents*  
5 of the Federal Bureau of Narcotics, 403 U.S. 388 (1971) must be dismissed. The United States,  
6 as a sovereign, is immune from suit unless it consents to be sued. *United States v. Mitchell*, 445  
7 U.S. 535, 538 (1980). Any waiver of that immunity must be strictly construed in favor of the  
8 United States. *United States v. Nordic Vill., Inc.*, 503 U.S. 30, 33-34 (1992); *Jerves v. United*  
9 *States*, 966 F.2d 517, 521 (9th Cir. 1992). A waiver of sovereign immunity "cannot be implied  
10 but must be unequivocally expressed." *Irwin v. Department of Veterans Affairs*, 498 U.S. 89, 95  
11 (1990). Moreover, it is the burden of any party advancing a claim against the United States to  
12 plead and prove that the court has jurisdiction to entertain the claim. *See Holloman v. Watt*, 708  
13 F.2d 1399, 1401 (9th Cir. 1983), *cert. denied*, 466 U.S. 958 (1984).

14 Additionally, federal district courts lack jurisdiction over suits against the United States  
15 unless the United States has expressly and unequivocally waived its sovereign immunity. *Balser*  
16 *v. Dep't of Justice, Office of U.S. Tr.*, 327 F.3d 903, 907 (9th Cir. 2003). Therefore, where the  
17 United States is the defendant, the plaintiff must show both subject matter jurisdiction and that  
18 the United States has waived its sovereign immunity. *Powelson v. United States, By and*  
19 *Through Sec'y of Treasury*, 150 F.3d 1103, 1104 (9th Cir. 1998) ("in an action against the United  
20 States, in addition to statutory authority granting subject matter jurisdiction, there must be a  
21 waiver of sovereign immunity.") (internal quotations and citations omitted).

22 Under a *Bivens* action, a plaintiff can sue a federal officer in his or her individual  
23 capacity seeking monetary damages for civil rights violations under color of federal law. *Bivens*,  
24

1 403 U.S. at 388. However, the Supreme Court has explicitly declined to recognize a *Bivens*  
 2 action for damages against federal agencies. *See FDIC v. Meyer*, 510 U.S. 471, 486 (1994)  
 3 (“[a]n extension of *Bivens* to agencies of the Federal Government is not supported by the logic of  
 4 *Bivens* itself”); *see also Cuevas v. Dep’t of Homeland Security*, 233 Fed. Appx. 642, 643-44 (9th  
 5 Cir. 2007) (affirming court’s dismissal of plaintiff’s constitutional claims because “DHS has not  
 6 waived its sovereign immunity” and any *Bivens* claim against DHS or against the federal  
 7 officials in their official capacity was foreclosed); *Ibrahim v. Dep’t of Homeland Sec.*, 538 F.3d  
 8 1250, 1257 (9th Cir. 2008) (“But no *Bivens*-like cause of action is available against federal  
 9 agencies or federal agents sued in their official capacities.”). Accordingly, the law is clear that  
 10 Plaintiff’s *Bivens* claim against DEA, FBI, and ATF must be dismissed for lack of subject matter  
 11 jurisdiction.

12 Furthermore, aside from *Bivens*, Plaintiff cites to no other statute or law that  
 13 unequivocally waives the United States’ sovereign immunity and allows him to sue federal  
 14 agencies for monetary damages.<sup>2</sup> Accordingly, this Court lacks subject matter jurisdiction over  
 15 Plaintiff’s constitutional claims seeking monetary damages from DEA, FBI, and ATF.

16 **B. The Court Lacks Subject Matter Jurisdiction over Plaintiff’s Sections 1983,  
 17 1985, and 1986 Claims Against DEA, FBI, and ATF.**

18 To the extent Plaintiff asserts claims against DEA, FBI, and ATF pursuant to 42 U.S.C.  
 19 §§ 1983, 1985, and 1986, those claims must also fail. The Civil Rights Act, codified at 42  
 20 U.S.C. § 1983, “provides a remedy only for deprivation of constitutional rights by a person  
 21

22 <sup>2</sup> On the face of the Complaint it is unclear whether Plaintiff also attempts to assert common law tort claims in  
 23 addition to constitutional claims against the federal government pursuant to the Federal Tort Claims Act (“FTCA”).  
 24 However, FBI, DEA, and ATF must still be dismissed from this lawsuit “[b]ecause the United States is the only  
 proper party defendant in an FTCA action” and “[a] claim against [a federal agency] in its own name is not a claim  
 against the United States.” *Kennedy v. U.S. Postal Service*, 145 F.3d 1077, 1078 (9th Cir. 1998) (citing 28 U.S.C. §  
 2679(a)).

1 acting under color of law of any state or territory or the District of Columbia.” *Daly-Murphy v.*  
 2 *Winston*, 837 F.2d 348, 355 (9th Cir. 1988). Here, to the extent Plaintiff alleges constitutional  
 3 violations by DEA, FBI, and ATF, or other federal actors, his Section 1983 claims must fail  
 4 because “by its very terms, § 1983 precludes liability in federal government actors.” *Morse v. N.*  
 5 *Coast Opportunities, Inc.*, 118 F.3d 1338, 1343 (9th Cir. 1997). Similarly, the Ninth Circuit has  
 6 also held that Sections 1985 and 1986 do not waive a federal agency’s sovereign immunity. *See*  
 7 *Jachetta v. United States*, 653 F.3d 898, 908 (9th Cir. 2011) (“To the contrary, §§ 1983 and 1985  
 8 impose liability upon a ‘person,’ and a federal agency is not a ‘person’ within the meaning of  
 9 these provisions.”) (citation omitted); *see also Trerice v. Pedersen*, 769 F.2d 1398, 1403 (9th Cir.  
 10 1985) (“[A] cause of action is not provided under [§ 1986] absent a valid claim for relief under  
 11 [§] 1985.”). Therefore, Plaintiff’s Sections 1983, 1985, and 1986 claims against DEA, FBI, and  
 12 ATF must be dismissed.

13 **C. Plaintiff is Not Entitled to Injunctive Relief From DEA, FBI, and ATF.**

14 Plaintiff’s Complaint also requests “that his name be cleared from all records with  
 15 Defendants and any other reporting agency, so that he will not have this botched and reckless  
 16 event continue to smear his name legally and socially.” Compl. at ¶ 12.5. As an initial matter, it  
 17 is unclear what Plaintiff means when he requests DEA, FBI, or ATF to clear his name “from all  
 18 records.” Plaintiff’s vague, poorly defined request runs afoul of the requirement that the  
 19 language of injunctions must be ““reasonably clear so that ordinary persons will know precisely  
 20 what action is proscribed.”” *Premier Communications Network v. Fuentes*, 880 F.2d 1096, 1100  
 21 (9th Cir. 1989) (quoting *United States v. Holtzman*, 762 F.2d 720, 726 (9th Cir. 1985)); *see also*  
 22 Fed. R. Civ. P. 65(d)(1) (requiring that an injunction order “state its terms specifically; and  
 23 describe in reasonable detail — and not by referring to the complaint or other document — the  
 24 act or acts restrained or required”). On that basis alone his request should be denied.

1 Furthermore, Plaintiff does not show a plausible basis for standing to seek injunctive  
 2 relief from DEA, FBI, or ATF. “To bring suit in federal court, a plaintiff must establish three  
 3 constitutional elements of standing.” *Mayfield v. United States*, 599 F.3d 964, 969 (9th Cir.  
 4 2010). Plaintiff must (1) “have suffered an injury in fact,” (2) “establish a causal connection  
 5 between the injury and the defendant’s conduct,” and (3) “show a likelihood that the injury will  
 6 be redressed by a favorable decision.” *Id.* (quotations omitted). Additionally, Plaintiff “must  
 7 demonstrate standing *separately* for each form of relief sought.” *Friends of the Earth, Inc. v.*  
 8 *Laidlaw Envtl. Serv., Inc.*, 528 U.S. 167, 185 (2000) (emphasis added). “Past exposure to  
 9 harmful or illegal conduct does not necessarily confer standing to seek injunctive relief if the  
 10 plaintiff does not continue to suffer adverse effects.” *Mayfield*, 599 F.3d at 970. “Once a  
 11 plaintiff has been wronged, he is entitled to injunctive relief only if he can show that he faces a  
 12 real or immediate threat ... that he will again be wronged in a *similar* way.” *Id.* (quotations  
 13 omitted) (emphasis added); *see also Nordstrom v. Ryan*, 762 F.3d 903, 911 (9th Cir. 2014) (“A  
 14 plaintiff seeking prospective injunctive relief must demonstrate that he is realistically threatened  
 15 by a *repetition* of [the violation].”) (quotations omitted) (alteration and emphasis in original).  
 16

16 Here, Plaintiff fails to allege with any specific facts how any federal government records  
 17 in the custody and control of DEA, FBI, or ATF “continue to smear his name legally and  
 18 socially.” Compl. at ¶ 12.5. Rather, he vaguely alleges that this incident “has prevented him for  
 19 [sic] performing his specialized work duties with sophisticated internet installations for his  
 20 employer,” but he does not provide any additional information that would allow the Court to  
 21 determine whether he is realistically threatened by a repetition of similar future violations as  
 22 opposed to completed actions. As pled, Plaintiff’s request to “clear all records” must be denied.  
 23  
 24

## IV. CONCLUSION

Accordingly, for the reasons set forth above, DEA, FBI, and ATF respectfully request dismissal from this civil rights lawsuit for lack of subject matter jurisdiction.

DATED this 20th day of September, 2021.

Respectfully submitted,

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s/ Kristen R. Vogel

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